

shall be under the jurisdiction and control of the Commissioners of the District.

This proviso does not in any manner seek to take from the District Commissioners their authority as custodians of the buildings under their duties and responsibilities as Commissioners of the District. This proviso in no manner contravenes the language of this positive law. It is more in the nature of a limitation upon the appropriation than a contravention or change of existing law.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Chairman, will the Chair permit an interruption?

THE CHAIRMAN: The Chair will hear the gentleman.

MR. NICHOLS: The point is, Mr. Chairman, that before this proviso the existing law was that all of the buildings in the District of Columbia should be under the control of the Commissioners of the District, except certain buildings included in which was the court building by specific provision. That was under the control of the judges of the courts. This proviso wipes out the control of the judges over this court building and places the control in the Commissioners of the District of Columbia. To this extent the proviso does change existing law.

THE CHAIRMAN: The Chair will state to the gentleman from Oklahoma that the feature to which the Chair is especially addressing the ruling is whether this is a change of existing law. The gentleman from Ohio bases his point of order on the ground that this is a change of the law affecting the custody of the building according to the statute the Chair just quoted. The proviso

under consideration in no manner changes existing law but is merely a limitation on an appropriation. The Chair so holding must necessarily overrule the point of order.

The gentleman from Ohio also directed the point of order against the paragraph the first portion of which includes this language:

For personal services, including temporary labor, and service of cleaners as necessary at not to exceed 48 cents per hour, \$129,000.

Standing alone, as a matter of course, this language is immune from a point of order because it is solely an appropriation for personal services, and so forth. If, therefore, the argument directed to the proviso goes down, necessarily the point of order against the paragraph as a whole must go down.

The Chair overrules the point of order directed against the paragraph.

## **§ 73. Education and Community Service; Health; Labor**

### ***Educational Assistance to Federally Impacted Areas***

**§ 73.1 To a general appropriation bill providing funds for educational assistance to “federally impacted areas,” an amendment providing that the appropriation shall not be available for a certain percentage of children of parents who live or work on**

**federal property or where local contribution rates are not determined in accordance with certain requirements specified in the authorizing law was held a proper limitation restricting the availability of funds and in order.**

On May 4, 1966,<sup>(9)</sup> the Committee of the Whole was considering H.R. 14745, a Departments of Labor, and Health, Education, and Welfare appropriation bill. The Clerk read as follows, and proceedings ensued as indicated below:

Amendment offered by Mr. [Frank T.] Bow [of Ohio]: On page 17, at the end of line 18, strike out the period and insert the following: "*Provided further*, That this appropriation shall not be available for payments to any local educational agency on account of (1) three per centum of the total number of children in average daily attendance in cases of children of parents who reside and work on Federal property, or (2) six per centum of the total number of children in average daily attendance in cases of children of parents who reside or work on Federal property, or (3) local contribution rates not determined in accordance with the first two sentences of section 3(d) of such Act, as amended (20 U.S.C. 238(d)), with respect to the areas covered thereby."

MR. [JOEL T.] BROYHILL of Virginia: Mr. Chairman, a point of order.

THE CHAIRMAN:<sup>(10)</sup> the gentleman will state his point of order.

MR. BROYHILL of Virginia: I make a point of order in that this would be legislation on an appropriation bill, because it would change the basic formula which is contained in the authorizing legislation. . . .

THE CHAIRMAN: The Chair notes that the three categories which are set forth in the amendment are merely limitations on an appropriation bill and are proper in its context. The point of order is overruled.

*Parliamentarian's Note:* The Chair apparently took the view that the distribution of funds under the amendment did not represent an alteration of the formula existing in law for allocating funds in federally impacted areas; rather, that the amendment merely withheld a portion of the funds that otherwise would have been distributed, the statutory formula nevertheless remaining intact. In other rulings, provisions relating to appropriations for educational assistance have been prohibited as constituting a distributional scheme different from that set forth in the authorizing law and, in some cases, as requiring additional duties not found in existing law on the part of administrative officials. See, for example, §§36.10–36.12, 52.18 and 52.19, *supra*.

9. 112 CONG. REC. 9833, 89th Cong. 2d Sess.

10. Frank Thompson, Jr. (N.J.).

**§ 73.2 Where legislation authorizing funds for impacted school aid establishes an apportionment formula for distribution of that aid to educational agencies, language in a general appropriation bill reducing, in a uniform manner, amounts available to all agencies for a certain category of such aid does not violate Rule XXI clause 2.**

On Apr. 7, 1971,<sup>(11)</sup> during consideration in the Committee of the Whole of the Education Department appropriation bill (H.R. 7016), a point of order was raised against the following provision:

SCHOOL ASSISTANCE IN FEDERALLY  
AFFECTED AREAS

For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of September 23, 1950, as amended (20 U.S.C., ch. 19), \$577,000,000, of which . . . \$15,000,000 . . . shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided*, That none of the funds contained herein shall be available to pay any local educational agency in excess of 68 per centum of the amounts to which such agency would otherwise be entitled pursuant to section 3(b) of title I: *Provided further*, That none of the funds contained herein shall be available to pay any local educational

agency in excess of 90 per centum of the amounts to which such agency would otherwise be entitled pursuant to section 3(a) of said title I if the number of children in average daily attendance in the schools of that agency eligible under said section 3(a) is less than 25 per centum of the total number of children in such schools.

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, a point of order.

THE CHAIRMAN:<sup>(12)</sup> The gentleman will state his point of order.

Mr. O'Hara: Mr. Chairman, I make a point of order against the provisos appearing on page 3, beginning at line 4 and running through line 15.

Mr. Chairman, the point of order is that the language referred to constitutes legislation in an appropriation bill. It provides a different method of making adjustments where necessitated by appropriations than that provided in the authorizing legislation; to wit, in section 203(c)(4) of Public Law 91-230. . . .

THE CHAIRMAN: Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Thank you, Mr. Chairman.

Mr. Chairman, the language to which the gentleman objects is clearly a limitation on the use of funds contained in this bill. The language is germane and it is completely negative. In the words of Chairman Nelson Dingley of Maine, which are quoted in Cannon's Procedure in the House of Representatives—Chairman Dingley said:

11. 117 Cong. Rec. 10096, 92d Cong. 1st Sess.

12. Chet Holifield (Calif.).

The House in Committee of the Whole has the right to refuse to appropriate for any object, either in whole or in part, even though that object may be authorized by law. That principal of limitation has been sustained so repeatedly that it may be regarded as a part of the parliamentary law of the Committee of the Whole. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The precedents which the gentleman from Michigan (Mr. O'Hara) pointed to are quite familiar to the Chair. There is a subtle difference between those amendments and the language that is before us.

[The Chair has] examined these two provisions appearing in the bill on page 3 and [has] reviewed the provisions of Public Law 874, including the two rulings which were made by the Chair a year ago on April 14 and February 19.

The first proviso uniformly reduces the amount available to the school districts which are entitled to funds under section 3(b) of Public Law 874, which is the section of the law which applies to local educational agencies where the impact is due to children of parents who reside or work on Federal property.

The second proviso limits the entitlement of certain local educational agencies where the impact is due to school attendance of children whose parents both reside and work on Federal property as determined by section 3(a) of Public Law 874 if the number of such children is less than 25 percent of the total number of children in such school.

Under the law, the Commissioner of Education is already required to deter-

mine the number of such children in this category in average daily attendance and the schools so affected. Determining these districts or local agencies where the 25-percent limitation applies thus presents the Commissioner with no substantial additional duties. He is already required by basic law to make that determination.

The Chair feels the decision of the committee is valid; that these provisos are in fact limitations couched in negative language on the funds in the bill. The Chair therefore overrules the point of order.

### ***Health, Education, and Welfare Building Construction***

**§ 73.3 Language in an appropriation bill providing that none of the funds in the bill shall be used for construction or planning of any building of the Department of Health, Education, and Welfare, nor to pay the salary of anyone in connection therewith, under the lease-purchase program, was held to be a limitation and in order.**

On Apr. 3, 1957,<sup>(13)</sup> during consideration in the Committee of the Whole of H.R. 6287, a Departments of Labor, and Health, Education, and Welfare appropriation bill, a point of order was overruled as follows:

Sec. 211. None of the funds provided herein shall be used, either directly or

13. 103 CONG. REC. 5040, 85th Cong. 1st Sess.

indirectly, for construction or planning of any building for the Department of Health, Education, and Welfare under the lease-purchase program, nor shall any of the funds provided herein be used to pay the salary of any person who assists or consults with anyone in connection with the construction or planning of any building for the Department of Health, Education, and Welfare under the lease-purchase program.

Mr. (JOHN W.) BYRNES of Wisconsin: Mr. Chairman, I make a point of order against section 211 in its entirety as being legislation on an appropriation bill. . . .

The Chairman:<sup>(14)</sup> The Chair is ready to rule.

The gentleman from Wisconsin makes a point of order against section 211 on page 38 of the bill. The Chair has read the section and finds that it is a pure limitation, and therefore overrules the point of order.

***College Housing Construction;  
No Funds "Unless in Compliance With Law"***

**§ 73.4 To an appropriation bill providing for construction of college housing, an amendment specifying that none of the funds may be allocated to an institution unless it is in full compliance with a law requiring the withholding of funds to students who are convicted of engaging in campus disorders was held**

14. Aime J. Forand (R.I.).

**to be a limitation (not requiring additional duties on the part of any federal official) and in order.**

On June 24, 1969,<sup>(15)</sup> the Committee of the Whole was considering H.R. 12307, an appropriation bill for independent offices and the Department of Housing and Urban Development. The Clerk read as follows:

For payments authorized by section 1705 of the Housing and Urban Development Act of 1968, \$2,500,000: *Provided*, That the limitation otherwise applicable to the total payments that may be required in any fiscal year by all contracts entered into under such section is increased by \$5,500,000.

MR. [WILLIAM J.] SCHERLE [of Iowa]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Scherle: On page 35, at the end of line 24, strike the period and insert the following: "*And provided further*, That none of the funds appropriated by this act for payments authorized by section 1705 of the Housing and Urban Development Act of 1968, shall be used to formulate or carry out any grant or loan to any institution of higher education unless such institution shall be in full compliance with section 504 of Public Law 90-575."

MR. [WILLIAM F.] RYAN [of New York]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:<sup>(16)</sup> The gentleman will state his point of order.

15. 115 CONG. REC. 17085, 91st Cong. 1st Sess.

16. John S. Monagan (Conn.).

MR. RYAN: I make a point of order on the ground that this amendment is legislation on an appropriation bill.

MR. SCHERLE: Mr. Chairman, the amendment is in order because it is in conformity with rule 21, clause 2 . . . specifying that amendments to appropriation bills are in order if they meet the qualifications of the "Holman Rule."

My amendment is germane, negative in nature, and shows retrenchment on its face. It does not either impose any additional or affirmative duties or amend existing law. . . .

In support of my amendment, I cite section 843 of the rules of the House discussing the Holman rule under rule 21: . . .

THE CHAIRMAN: The Chair is prepared to rule and holds that the amendment is a proper limitation. Therefore, the Chair overrules the point of order.

*Parliamentarian's Note:* This ruling (and Public Law No. 90-575 §504) are discussed more fully in §53, supra, in relation to other rulings which concern the issue of what constitutes the imposition of additional duties on officials, and whether the imposition of such duties on nonfederal officials or private parties amounts to legislation on appropriation bills. (See the "Note on Contrary Rulings" following §53.6.) Such rulings have not been uniform, and some effort in §53 is made to clarify the trend of

these rulings. Rulings discussed include those with respect to attempts to limit or prohibit funds for certain types of projects not having "local" approval, where such approval is not required in the authorizing law.

### ***Discrimination***

**§ 73.5 To the labor-federal security appropriation bill, an amendment providing that no part of any appropriation under one of its titles shall be paid as grants to state or educational institutions in which because of race, color, or creed, discriminatory practices deny equality of educational opportunity or employment was held germane and in order.**

On Mar. 8, 1948,<sup>(17)</sup> an amendment was offered as follows to the Department of Labor and Federal Security Agency appropriation bill of 1949:<sup>(18)</sup>

Amendment offered by Mr. [Vito] Marcantonio [of New York]: On page 27, after line 22, insert a new section:

"Sec. 207. No part of any appropriation under this title shall be paid as grants to any State or educational institution in which, because of race, color, or creed, discriminatory practices

17. 94 CONG. REC. 2356, 80th Cong. 2d Sess.

18. H.R. 5728.

deny equality of educational opportunity or employment to any one to pursue such educational courses or employment as are provided for by such a grant."

The point of order which followed did not expressly raise the issue of whether the above language constituted legislation, but the Chair, in ruling that the amendment was germane, implicitly recognized Mr. Marcantonio's position that the amendment was permissible as a negative limitation on the use of funds. The point of order and ruling thereon were as follows:

MR. [JOHN E. RANKIN] [of Mississippi]: Mr. Chairman, I make a point of order against the amendment that the amendment is not germane and it is not in order at this point in the bill. I will reserve the point of order if the gentleman wants to discuss the matter.

MR. MARCANTONIO: No. Let us have it decided now. . . . The amendment certainly is germane. It is simply a negative limitation. It restricts the use of the funds and it is clearly in order.

THE CHAIRMAN [FOREST A. HARNESS, OF INDIANA]: There is no question but that the amendment is germane. This is an appropriation bill and the amendment deals with an appropriation made in the bill. Therefore the Chair overrules the point of order.<sup>(19)</sup>

19. See also §§61 and 68, *supra*, for more precedents relating to civil liberties.

### ***Cut Off in Certain Education Funds to Students***

**§ 73.6 Where existing law authorized basic opportunity grants for higher education assistance to students in all years of study, an amendment prohibiting the availability of funds in a general appropriation bill for assistance to students enrolled prior to a date certain was held in order as a negative limitation on the use of funds in the bill.**

On June 27, 1974,<sup>(20)</sup> during consideration of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15580), the following amendment was ruled in order as indicated below:

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Flood: Page 18, line 7, insert "": *Provided*, That none of the funds in this Act shall be used to pay any amount for basic opportunity grants for full-time students at institutions of higher education who were enrolled as regular students at such institutions prior to April 1, 1973." . . .

MRS. [EDITH] GREEN of Oregon: Mr. Chairman, I make a point of order

20. 120 CONG. REC. 21671, 21672, 93d Cong. 2d Sess.

against this amendment. The point of order is what I cited a moment ago, Cannon's Procedure in the House of Representatives, on page 246:

If a part of a paragraph . . . is out of order, all is out of order and a point of order may be raised against the portion out of order or against the entire paragraph. . . .

THE CHAIRMAN: <sup>(1)</sup> The Chair is prepared to rule.

The amendment offered by the gentleman from Pennsylvania (Mr. Flood), does appear to meet the tests of a limitation on an appropriation bill. It limits the funds in this specific bill and it is negatively stated. For these reasons it would clearly appear to be admissible as a limitation, distinguishable from that language which was stricken in the proviso that had appeared in the original bill.

The Chair does not understand that the gentlewoman had raised a point of order against the entire paragraph. The gentlewoman raised two specific points of order on which the Chair ruled.

If the gentlewoman had at that time intended to make a point of order against the entire paragraph she should so have stated, and the Chair believes that a point of order at this moment on those grounds would be untimely made since an amendment to the paragraph is now pending.

### ***Busing to Schools Nearest Home***

#### **§ 73.7 Where existing law prohibited the implementation**

1. James C. Wright, Jr. (Tex.).

**by any court, department, or agency of a plan to transport students to a school other than the school nearest or next nearest their homes which offers the appropriate grade level and type of education for each student (thus requiring determinations of school proximity and curriculum to be made by federal officials), a paragraph in a general appropriation bill prohibiting the use of funds therein for the transportation of students to a school other than the school nearest their homes and offering the courses of study pursued by such students was held in order as a negative limitation on the use of funds in that bill, since it did not directly amend existing law and did not require new determinations by federal officials that they were not already required by law to make.**

The proceedings of June 24, 1976,<sup>(2)</sup> are discussed in §64.26, *supra*.

2. 122 CONG. REC. 20408-10, 94th Cong. 2d Sess.

***Abortion; Broad Limitation of Funds***

**§ 73.8 An amendment restricting the use of funds in an appropriation bill for abortion or abortion referral services, abortifacient drugs or devices, the promotion or encouragement of abortion, etcetera, was held to be a negative limitation on funds in the bill imposing no new duties on federal officials other than to construe the language of the limitation in administering the funds.**

On June 27, 1974,<sup>(3)</sup> during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15580), an amendment was held in order as follows:

The Clerk read as follows:

Amendment offered by Mr. [Angelo D.] Roncallo of New York:

Amend H.R. 15580 by adding a new section 412 on page 39 of the bill as follows:

Sec. 412. No part of the funds appropriated under this Act shall be used in any manner directly or indirectly to pay for abortions or abortion referral services, abortifacient drugs or devices, the promotion or encouragement of abortion, or the support of research designed to develop methods of abortion, or to force

any State, school or school district or any other recipient of Federal funds to provide abortions or health or disability insurance abortion benefits. . . .

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I make a point of order against the second amendment proposed by the gentleman from New York.

My grounds are the same as to the previous amendment, Mr. Chairman; namely, that this is legislation on an appropriation bill.

Second, that it requires new duties on the part of officials in connection with the operation of this amendment.

I particularly call the attention of the Chair to the use of the term "promotion or encouragement of abortion."

This phrase will require additional duties on the part of the outside officials. Therefore, it goes beyond the scope of an appropriation provision. . . .

MR. [BOB] ECKHARDT [of Texas]: . . . The language of the revised section 412 necessarily requires a definition of what constitutes the moment of fertilization, in that the term abortifacient drug or devices is used.

Now, the question of whether or not a drug or device is abortifacient depends on the moment of fertilization. If it is to be not abortifacient, it prevents fertilization. If it comes under the language of this act, the moment of fertilization must occur before the drug or the device acts upon the inseminated egg.

Therefore, there is an absolutely necessary determination by the agency of the moment of fertilization.

Furthermore, there is the term abortion, the term abortion must nec-

3. 120 CONG. REC. 21687, 93d Cong. 2d Sess.

essarily determine the definition as contained in the last line and, therefore, requires affirmative duties on the part of the agency. . . .

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Chairman, as originally offered, the amendment of the gentleman from New York definitely did require some sort of action on the part of the Government officials, but I heartily disagree with the statements that have been made here.

There are no additional duties imposed whatsoever. In fact, like the antibusing amendment in the two other sections, it is a limitation on the expenditure of funds in this bill just as the rules provide. No new duties and no directions are allowed. Abortion is a well understood term, and is found in any dictionary. It is perfectly admissible under the rules of the House.

THE CHAIRMAN:<sup>(4)</sup> The Chair is prepared to rule.

As originally offered, the amendment contained a definition of abortion which would have defined that term as being the intentional destruction of unborn human life, which subjected the amendment to a successful challenge on the ground that it would have imposed upon an administrator the responsibility of determining a question of another person's intent.

There have been precedents under which that type of a requirement has been held to be legislation on an appropriation bill.

As presently constituted, the amendment secondly offered by the gentleman from New York, in the opinion of the Chair, contains no direction nor

immediately discernible new duty incumbent upon its administrator beyond the fact that every limitation is a compilation of words if it is written into a law, and it always would devolve upon an administrator to interpret the meaning of the words therein contained. It would be, of course, manifestly contrary to the main thrust of the rulings of the Chair if limitations were to be construed as legislation merely because their enactment would require some statutory interpretation.

Under the circumstances, the Chair, the present occupant having carefully examined the amendment and carefully listened to the arguments, is constrained to overrule the point of order.

### ***Occupational Safety and Health Act Enforcement—Salary Cut Off for Inspectors of Certain Size Firms***

**§ 73.9 An amendment prohibiting the payment of funds for salaries of federal employees "who inspect firms employing 25 or fewer persons to enforce compliance with the Occupational Safety and Health Act" was held in order as a negative limitation on the availability of funds in a general appropriation bill which merely described a category of employees who would not be compensated from those funds.**

On June 27, 1974,<sup>(5)</sup> during consideration in the Committee of the Whole of

4. James C. Wright, Jr. (Tex.).

5. 120 CONG. REC. 21652, 21662, 21663, 93d Cong. 2d Sess.

the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 15580), an amendment was held in order as follows:

The Clerk read as follows:

For necessary expenses for the Occupational Safety and Health Administration, \$100,816,000.

MR. [PAUL] FINDLEY [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Findley: On Page 6, after line 17, add the following:

"None of the funds appropriated by this Act shall be expended to pay the salaries of any employees of the Federal Government who inspect firms employing twenty-five or fewer persons to enforce compliance with the Occupational Safety and Health Act of 1970." . . .

MR. [JOSEPH M.] GAYDOS [of Pennsylvania]: Mr. Chairman, I have to raise a point of order for the reason it is a limitation on an appropriation bill.

Very hurriedly, let me state that a limitation on an appropriation bill is legitimate if and only if:

First, it is worded so that it limits the use of money, rather than limiting the discretion of an Executive officer to carry out his duties;

Second, it applies only to the use of the present appropriation rather than attempting to legislate a permanent restraint on the spending authority of an Executive officer.

An amendment which forbids the Secretary of the Treasury from paying the salary of OSHA inspectors out of the current DOL appropriation for the inspections of premises of employers with 25 or fewer employees, would seem to meet these criteria. There are,

however, three arguments which seem to indicate that this limitation is in fact legislation and therefore not appropriate under House rule 21, clause 2.

First, section 8(f) of the act provides that an employee in any size business may file a complaint with the Secretary of Labor, and the Secretary must respond to such complaint. Further, this employee right is protected by the antidiscrimination clause of section 11(c) of the act. Failure to provide the Secretary with the funds to respond to these employee complaints leaves these employees with a protected right but without a remedy, a situation abhorred by the law. It effectively amends OSHA to remove the right for a group of employees, and there is no rational basis for this sort of discrimination. While it is well established that the Congress may pass a law creating a Government authority or function and then withhold funds from it, it is questionable whether there is any precedent for using a limitation to delete the remedy for a legislatively established right vested in an individual. The mover of the amendment should be asked to provide such a precedent.

Second, the inspectors used by the Secretary of Labor to carry out all investigations are assigned to regions at the present time on the basis of the concentration of businesses in each region—all businesses. The vast majority of businesses do employ under 25 persons, and following the terms of the amendment, these could no longer be counted in the computation by the Secretary of Labor. . . . In short the amendment imposes a substantial burden upon the Secretary of Labor, and

the precedents are clear that a limitation may not impose any additional duties upon an executive officer.

Finally, OSHA is a carefully developed law which was the result of deliberate balancing of employee and employer rights by the appropriate committees of the Congress, and any change in that balance effectively constitutes legislation. Since the amendment would change the rights of some employees, it should, therefore, not be attached to an appropriations bill. . . .

MR. FINDLEY: . . . Mr. Chairman, in fact this language is so close to being identical to a number of other similar amendments offered and sustained by rulings of the Chair, that I am surprised that any point of order would be raised. It is clearly within the rule that it is retrenchment on its face. It establishes no obligation on the part of the executive branch for additional duties. It requires no determination. It does not go beyond the fiscal year involved, and it simply withholds the salaries for a specified purpose. . . .

THE CHAIRMAN: <sup>(6)</sup> The Chair is prepared to rule.

The gentleman from Pennsylvania makes a point of order that the amendment offered by the gentleman from Illinois constitutes legislation on an appropriation bill, as distinguished from an authorization, and therefore it would be in violation of clause 2, rule XXI.

The Chair has examined the amendment and the provisions of the Occupational Safety and Health Act, Public Law 91-596. The amendment would prohibit the use of funds in the bill for the payment of the salaries of Federal

employees who inspect firms employing 25 or fewer persons with respect to compliance under that act.

Clearly, as the gentleman from Pennsylvania acknowledges, and as all the precedents would attest, the House could refuse to appropriate any sums whatever for the administration of the act in question. Or, it could prohibit the appropriation of any funds to pay the salaries of any inspecting officers under the act. This particular amendment merely limits the use of funds in the bill for a certain described category of such employees.

The gentleman from Pennsylvania suggests that this fact would render the burden upon the executive branch and the administrators to make precise determinations, and that it would have a discriminatory effect.

The Chair has examined several precedents which relate to restrictions on the payment of appropriations for certain salaries or expenses. On June 6, 1963, Chairman Keogh ruled that to a bill appropriating funds for the Department of Agriculture, an amendment providing that—

None of the funds herein shall be used to pay the salary of any . . . employee who . . . performs duties . . . incidental to supporting the price of . . . cotton at a level in excess of 30 cents a pound.

Was a proper limitation, and admissible under the rules of the House.

On June 6, 1941, Chairman Lanham ruled that an amendment to a military appropriation bill providing that no funds therein shall be paid as compensation to any person employed in the manufacture of defense articles who stops work in excess of 10 days on

6. James C. Wright, Jr. (Tex.).

a strike, or who fails to resume work within 3 days after the Government takes over such a plant, was a valid limitation.

The Chair would also simply call attention to Cannon's volume 7, paragraphs 1663 and 1689, which were cited by Chairman Gibbons on the agriculture and environmental consumer appropriation bill on Friday last, when that Chairman overruled a point of order that a limitation therein on the payment of salaries or funds in the bill constituted legislation.

The Chair feels that the amendment offered by the gentleman from Illinois is a valid limitation on the use of funds appropriated in this bill, and therefore overrules the point of order.

#### ***—Monitoring State Procedures***

**§ 73.10** An amendment denying the use of funds for state plan monitoring visits by the Occupational Safety and Health Administration where the workplace has been inspected by a state agency within six months, but also providing that the limitation would not preclude the federal official from conducting a monitoring visit at the time of the state inspection, to investigate complaints about state procedures, or as part of a special study program, or to investigate a catastrophe was held not to require new determinations by

**federal officials, where existing law directed state agencies to inform federal officials of all their activities under state plans.**

The proceedings of June 27, 1979,<sup>(7)</sup> are discussed in § 66.6, *supra*.

#### ***—No Funds to Enforce Certain Regulations***

**§ 73.11** Where an amendment to a general appropriation bill prohibited the use of funds therein for the Occupational Safety and Health Administration to administer or enforce regulations with respect to employers of 10 or fewer employees included in a category having an "occupational injury lost work day case rate" less than the national average, except to perform certain enumerated functions and authorities, but exempted from the prohibition farming operations not maintaining a temporary labor camp, the amendment was held not to constitute additional legislation on an appropriation bill; the determination as to the category in which the business fell

7. 125 CONG. REC. 17033-35, 96th Cong. 1st Sess.

**with respect to the average injury lost work day rate, and the determination whether that average was less than the national average, were easily ascertainable from statistics periodically published, pursuant to law, by the Bureau of Labor Statistics; the permissible functions and authorities funded by the amendment were all authorized in existing law; and the exemption as to certain farming operations restated a legislative provision already in the bill, in the paragraph to which the amendment related.**

On Aug. 27, 1980,<sup>(8)</sup> during consideration in the Committee of the Whole of the Departments of Labor, and Health, Education, and Welfare appropriation bill (H.R. 7998), a point of order against the following amendment was overruled:

Amendment offered by Mrs. [Beverly B.] Byron (of Maryland): At page 10, line 10, insert after "fishing:" the following new proviso:

*"Provided further,* That no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Occupational Safety and Health Act of 1970 with re-

spect to any employer of ten or fewer employees who is included within a category having an occupational injury lost work day case rate, at the most precise Standard Industrial Classification Code for which such data are published, less than the national average rate as such rates are most recently published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of that Act (29 U.S.C. Sec. 673), except . . .

"(6) to take any action authorized by such Act with respect to complaints of discrimination against employees for exercising rights under such Act: *Provided further,* That the foregoing proviso shall not apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees". . . .

MR. [JOSEPH M.] GAYDOS [of Pennsylvania]: Mr. Chairman, I raise a point of order against this amendment for the reason that it is legislation on an appropriations bill. The amendment changes existing statutory law and, in effect, amends the Occupational Safety and Health Act of 1970 by exempting a specific class of employers from the integral provisions of the act. This amendment goes far beyond reducing or restricting the amount of money in the appropriation.

The language of this amendment would clearly impose on OSHA officials new additional duties not otherwise required by existing law. Look at all the additional determinations to be made by the Department of Labor. OSHA officials, under this amendment, would be required to make determinations on the exempt status of firms which are not required by existing law. . . .

8. 126 CONG. REC. 23519-21, 96th Cong. 2d Sess.

. . . This amendment serves to change existing law by adding to the basic statute conditions or requirements governing the scope of investigations and the assessment of penalties pursuant to these investigations. In other words, this amendment provides an affirmative direction to executive officials in situations where the statute provides these officials with the discretion in the exercise of their authority. . . .

. . . [A]ccording to Deschler's Procedure, language in a paragraph of a—

General appropriations bill containing funds for the Federal Trade Commission for the purpose of collecting line-of-business data from . . . “not to exceed 250 firms” . . . was conceded to directly interfere with the discretionary authority of the F.T.C.—a restriction on the scope of the investigation rather than a limitation on availability of funds. . . .

The amendment before us directly interferes with the discretionary authority of OSHA by limiting the scope of general schedule safety inspections to only those inspections or investigations meeting the substantive requirements of the amendment. This approach is tantamount to limiting the safety inspections to a fixed number of firms. . . .

MRS. BYRON: . . . Mr. Chairman, I rise in opposition to the point of order. This amendment does not impose any additional duties upon the Secretary of Labor, and therefore is not legislation in an appropriation bill. . . .

. . . In order to comply with the limitation regarding the size of the business and the safety records of the industry, no new duties are required of

the Secretary. Section 24 of the Occupational Safety and Health Act already requires the Secretary to maintain occupational and safety health statistics. Section 1904–20 of title XXIX of the Code of Federal Regulations specifically includes the exact statistics that are utilized in the first part of my amendment. . . .

THE CHAIRMAN: <sup>(9)</sup> . . . The Chair is prepared to rule. . . .

. . . In reviewing the amendment, it would prohibit the use of funds in the bill to enforce standards or rules under the Occupational Safety and Health Act with respect to certain employers, except for enumerated functions and activities authorized under such Act. The amendment applies to employers with 10 or fewer employees whose business falls within a category having an injury work loss day rate less than the national average as indicated by statistics published by the Bureau of Labor pursuant to law. The amendment does not require individual findings of injury rates in each separate business, but only a determination as to the category into which the business falls.

The Chair has reviewed the set of statistics that is required by section 673 of the OSHA law, and finds that the determination as to what category that the business relates to and the relationship between the average rate for that category and the average rate for all business is very easily ascertainable and is now being undertaken under OSHA regulations. . . .

No new duties or determinations are hereby required, and the final proviso, while requiring findings as to the tem-

9. Don Fuqua (Fla.).

porary status of a farm labor camp, is already in the bill and the amendment does not add legislation to that permitted to remain in the bill. . . .

The amendment restricts the use of funds to carry out part of the authorized activity while allowing but not requiring the agency to use funds in the bill to carry out other authorized activities. While an amendment to an appropriation bill may not directly curtail executive discretion delegated by law, it is in order to limit the use of funds for an activity or a portion thereof authorized by law if the limitation does not require new duties or impose new determinations.

The Chair overrules the point of order.

***Reduction in Trade Adjustment Assistance by Amount of Unemployment Insurance***

**§ 73.12 Where existing law (19 § 2292) established trade readjustment allowances to workers unemployed because of import competition and required the disbursing agency to take into consideration levels of unemployment insurance entitlements under other law in determining payments, an amendment to a general appropriation bill reducing the availability of funds therein for trade adjustment assistance by amounts of unemployment insurance was held not**

**to impose new duties upon officials already required to make those reductions.**

The proceedings of June 18, 1980,<sup>(10)</sup> are discussed in § 52.36, *supra*.

## **§ 74. Federal Employment**

### ***Maximum Age***

**§ 74.1 To an appropriation bill, an amendment to provide that no part of the funds thereby appropriated shall be used to pay compensation of persons who allocate positions in the classified civil service with a requirement of maximum age for such positions was held to be a proper limitation and in order.**

On Mar. 30, 1955,<sup>(11)</sup> the Committee of the Whole was considering H.R. 5240, an independent offices appropriation bill. The following proceedings took place:

Amendment offered by Mr. [Sidney R.] Yates [of Illinois]: On page 37, after line 25, insert a new section to be designated as section 108, as follows:

"No part of any appropriation contained in this title shall be used to pay the compensation of any officers and employees who allocate positions in the

10. 126 CONG. REC. 15354-56, 96th Cong. 2d Sess.

11. 101 CONG. REC. 4077, 84th Cong. 1st Sess.